

INITIAL STATEMENT OF REASONS:

This action amends provisions governing inmate pay. These changes are necessary to create operational consistency in institutions and facilities where inmates are employed in work incentive programs, and to prevent disparate treatment.

New subsections 3040(b), (k) and (l) are added in order to more clearly frame the issue of monetarily compensated inmate work as addressed in greater detail in the following sections of these regulations. Subsection (b) establishes that inmate compensation is an option available to the Director or designee, subject to approval of the Department of Finance, by statute limited to a rate no more than half the minimum wage. However, the determination of which assignments will actually be paid positions and the rate of pay particular inmates will receive within the limitation established by statute will be made at the individual institutional level. That the allocation of paid assignments on an institutional-specific basis will be made to the best advantage of the department and inmate population as a whole is a primary criterion expressed in subsection (k). Each institution shall administer such programs consistent with allotted budgets, with the assistance of Department and institutional-level inmate pay committees, which will provide added oversight for all inmate pay matters. Subsection (l) makes clear the fact that a paid position, rate of pay and/or the eligibility to earn pay is a privilege subject to funding, job performance, seniority and conduct. In response to an unpublished appellate court decision these particular factors are established as the criteria used in determining which positions are paid or changed to non-pay status. Finally, subsection (m) specifies certain inmate assignments as non-pay, including Inmate Advisory Council Members, Vocational Student Assignments, Academic Student Assignments and any other assignment deemed non-paid by the head of the relevant institution. Explicitly identified exclusions to this rule are allowed, as cited.

Educational and vocational student programs (except apprenticeship programs) are excluded from payment because these programs benefit the students, providing them with educational or training skills to make them more competitive in the job market, both while incarcerated and upon return to the community. These are not jobs, per se, and should be unpaid, just as a person going to school or job training in the community is not paid to do so. Inmate Advisory Council members and vice-chairpersons are elected, voluntary positions in addition to regular assignments. Inmates holding these positions may work full-time jobs for pay in addition to these gratuitous assignments. The Inmate Advisory Council Chair and Secretary, vocational student apprentices and other such students performing "productive work" constitute jobs typically exclusive of any other assignment or are funded for compensation, and will be paid subject to any decision to the contrary by the institutional head.

Section 3040 is renumbered throughout in order to accommodate the above-noted changes while minor textual revisions in existing subsections (e) and (f) is made for purposes of improved clarity.

Existing Subsection 3041(b) is amended in order to address certain performance and documentation matters. Subsection (b)(1) for the first time clarifies that unauthorized absences from the program/work site results in no credit earning for the entire day, while subsection (b)(2) further specifies that there shall be no pay granted

when such absences occur. New text respecting the documentation of paid inmate work on time cards is added and cross-referenced with the existing provisions of section 3045 pertaining to timekeeping and reporting in general.

Existing Section 3041.1 is amended with substantive and editorial revisions throughout. Editorially, the existing provisions of this section are re-designated subsection (a), (1) through (6) as opposed to (a) through (f) with no subsection designation. New subsections (b), (c) and (d) are added and minor textual revisions or rearrangements are made in new subsection (a) and existing subsection (f) for purposes of improved clarity. Substantively, a new subsection (b) specifies that an application and/or resume process is to be used in the selection of skilled workers for paid positions while subsection (c) directly connects paid assignments with funds or allotments budgeted for such purposes. New subsection (d) establishes that all paid work/training assignments will be ranked in sequential order of technical skill required. Furthermore, the department will use the skill level designations specified in the US Department of Labor's Dictionary of Occupational Titles (DOT) in order to maintain system-wide continuity throughout the individual institutions and facilities under its jurisdiction. This skill level provision is directly linked to the inmate pay schedule provision newly set forth in amended subsection 3041.2(a)(1) below.

Existing Section 3041.2 is amended with substantive and editorial revisions throughout. Subsection (a) has been modified to specify that pay rates for each position at an institution/facility shall be in accordance with a standardized schedule. Current language allows each facility to establish inmate pay assignments; however, it does not specify standardization of the pay rate, therefore this regulatory change is necessary to order to ensure system-wide uniformity. Existing subsections (b), (c) and (d) is re-designated (c), (d) and (g) in order to incorporate changes explained as follows. Minor textual changes are also made for improved clarity.

New subsections 3041.2(a)(1) and (2) creates for the first time a table or schedule by which to determine the rate of pay appropriate to compensated inmate work. This pay schedule is organized by skill level and range of minimum hourly and maximum monthly dollar amounts that shall be paid for the work performed. There is a corresponding relationship between the pay rate and skill level, as depicted numerically, descriptively and by DOT Skill Level. Moreover, a high and low range is incorporated within the minimum and maximum amounts indicated. On one hand, this provision responds to long-standing pressure to create a uniform pay scale for inmate work, while on the other hand a certain degree of existing and desirable flexibility at the individual institutional level is preserved. Since there are many factors that affect each institution and inmate position, the most effective method of administering inmate pay is to allow each institution to determine its own needs and priorities. The pay schedule can then be employed as a "matrix" of compensation parameters and skill level in determining the relative worth of any particular inmate job assignment somewhat uniformly throughout the institutions administered by the department.

New subsection 3041.2(b) is added to give facilities the authority to establish pay rates commensurate with those of the Prison Industry Authority (PIA). This is necessary to establish specific regulatory authority. This section is added to allow institutions/facilities that have a large PIA work force or similar recruitment or retention

issues to retain skilled workers in assignments that would otherwise offer less pay, enabling the institution to “compete” with PIA for these skilled workers. Such exceptions shall be subject to higher-level endorsement.

New subsection 3041.2(e) is added to establish that inmates may receive pay increases on a quarterly basis until the maximum pay rate for that assignment is obtained.

New subsection 3041.2(f) is added to establish the procedure by which pay increases shall occur. Pay increases shall be based on performance documentation, the recommendation of the supervisor and the approval of the work/training incentive coordinator and authority responsible for overseeing the inmate’s work assignment. There will be no reduction in pay with advancement in skill classification, and both job performance and total hours spent in a particular classification shall be reviewed when changes in job classification are considered.

Existing subsection 3043.5(a)(1) is amended. This section is modified to establish additional pay assignments for the Inmate Advisory Council. A chairperson and vice chairperson is chosen for each council within an institution, total membership of which could amount to as many as 14 individuals per institution. Current language only authorizes pay for two positions for each institution, which does not meet departmental needs. The change allows for the redirection of paid positions for the Inmate Advisory Council. The first sentence strikes “vice chairperson” and establishes a paid position for the secretary, instead. The vice chairperson position is not a full-time assignment; that of secretary is. This change is necessary in the interest of fairness and consistency. The mandated pay should be allocated for the full-time positions.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

No alternatives to these regulations have been considered at this time. No technical, theoretical, and empirical study, report, or similar document was relied upon in proposing these regulatory changes.